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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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MARGER JOHNSON & MCCOLLOM P C  
1030 S W MORRISON STREET  
PORTLAND, OR 97205

EXAMINER

WAXMAN, ANDREW

ART UNIT

PAPER NUMBER

2662

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/475,751

Applicant(s)

MURPHY, JAMES

Examiner

Andrew M Waxman

Art Unit

2662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-16, 18 and 19 is/are allowed.
- 6) ☒ Claim(s) 1, 5-8 and 17 is/are rejected.
- 7) ☒ Claim(s) 2-4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Drawings*

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 17 is incomplete because it depends from itself.

### *Claim Rejections - 35 USC § 102*

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Art Unit: 2662

1. Claims 1, 5, 7, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Fitzgerald, Publication number US 2001/0023454 A1, here in after referred to as Fitzgerald.
2. Regarding claim 1, Fitzgerald discloses a gateway apparatus (18) including an encoder (22 see page 1 pgph. 0017) that encodes audio signals into audio packets and a packetizer (24 see pgph. 0019) for converting the audio packets into network packets ready for transmission. The packetizer also monitors the congestion occurring in the packet network by way of an end-to-end delay signal, and the gateway apparatus (18) adjusts the amount of audio data encoded into the audio packet accordingly. Fitzgerald further discloses the size of the packet payloads are dynamically adapted to the amount of end-to-end congestion in a packet network, this includes the utilization capacity of the gateway since the gateway is included within the network. See page 1 paragraph 0006.
3. Regarding claim 5, Fitzgerald further discloses adapting the size of the packet payloads according to the monitored level of network congestion (paragraph 0006). The level of congestion in a network is primarily based on the performance of its elements. Performance is dependent upon the amount of and ability to process the traffic input to these elements. An increase in the number of audio signals input to the switching element (as disclosed by Fitzgerald) would constitute an increase in data/ voice traffic and a decrease the performance of the network switch. Furthermore causing an increase in network congestion.
4. Regarding claim 7, Fitzgerald further discloses encoding 20 milliseconds of the audio signal when the network congestion is below a first threshold, 40 milliseconds when network

Art Unit: 2662

congestion rises above a first threshold, and 100 milliseconds or more when the network congestion rises above a second threshold great than the first. See page 2 paragraphs 0027-0029.

5. Regarding claim 8, Fitzgerald further discloses the audio signal being received over a PSTN call, and transmitted as IP packets over an IP network (Packet Network 16). Fitzgerald teaches the audio signal being converted into packets fit for VOIP (Voice over Internet Protocol) applications, inherently making them suitable for transmission over an IP network. Furthermore Fitzgerald discloses multiple telephone sets connected to handsets connected to the gateway (18). It is well known in the art that this connection is primarily made through a PSTN.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzgerald.

Regarding claim 6, Fitzgerald discloses all of the limitations as recited in claim 1 above.

Fitzgerald does not disclose including multiple encoders to encode different incoming calls.

At the time the invention was made it would have been obvious to one of ordinary skill in the art to include multiple encoders in the invention as disclosed by Fitzgerald.

Art Unit: 2662

One of ordinary skill in the art would have been motivated to do this to enable the ability to encode multiple audio signals at a time facilitating multiple communications lines between multiple parties. This would provide for a more marketable and profitable invention.

*Allowable Subject Matter*

8. Claims 2, 3, and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 9-19 are allowed.

*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Joy discloses dynamic sizing of data packets.

Pounds discloses systems and methods for multiple mode voice and data communications.

Chan discloses a packet network telephone interface system.

Ng discloses a method and apparatus for making a phone call connection over an internet connection.


Art Unit: 2662

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew M Waxman whose telephone number is (703) 305-8086. The examiner can normally be reached on 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on (703) 305-4744. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

Andrew M. Waxman  
January 13, 2003



HASSAN KIZOU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600